

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

C.A. NO. 3:22-CV- 04524-CMC

Mark Fultz,

Plaintiff,

v.

Two Notch Hospitality, LLC,

Defendant.

**DEFENDANT’S NOTICE  
OF REMOVAL**

PLEASE TAKE NOTICE that, and pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, Defendant Two Notch Hospitality, LLC (hereinafter “Defendant”), by and through its undersigned counsel, hereby files this Notice of Removal to remove this action previously pending in the Court of Common Pleas for Richland, County South Carolina, to the United States District Court for the District of South Carolina, Columbia Division. The grounds for removal are as follows:

1. A civil action is now pending in the Court of Common Pleas for Richland County, South Carolina, bearing the case name as captioned above with Docket Number 2022-CP-40-05748 (hereinafter “this Action”). Defendant received service of the Summons and Complaint on November 15, 2022. Thirty days have not yet elapsed since Defendant received the Summons and Complaint. Defendant has not yet answered or otherwise pled responsively to the Complaint.
2. Defendant files herewith in this Court a copy of the Summons and Complaint, which are the only process and pleadings contained in the Court of Common Pleas file in this Action. Copies of all process, pleadings, and orders served in this action are attached hereto as Exhibit 1.

3. This Notice of Removal has been timely filed under 28 U.S.C. § 1446(b)(3) within thirty (30) days of Defendants' receipt, through acceptance of service, of a copy of the initial pleading setting forth claims for relief upon which the action became removable.

4. This Court has original jurisdiction over this action under 28 U.S.C. §1331 as Plaintiff's Complaint asserts one cause of action that arises under federal law. Specifically, this action is removable pursuant to 28 U.S.C. §1441(a) because Plaintiff's Complaint asserts claims for relief under Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and amendments thereto (Complaint, ¶¶ 4-13). As such, this Court has original jurisdiction over Plaintiff's claim.

5. Venue for removal is proper in this district and division under 28 U.S.C. § 1441(a) and 28 U.S.C. § 121(2) because this district and division embrace the Court of Common Pleas for the Fifth Judicial Circuit in Richland County, South Carolina, the forum in which the removed action was pending.

6. Pursuant to 28 U.S.C. § 1446(d), Defendant is serving a written notice of the filing of this removal (Exhibit 2) on Plaintiff's counsel and the Clerk of Court from which this action is being removed, along with a copy of this Notice (without attachments).

7. Payment of the appropriate fees and costs for removal and docketing of this matter in federal court, if any, are tendered with this Notice.

8. Because this Notice of Removal is neither a responsive pleading nor a motion under Rule 12 of the Federal Rules of Civil Procedure, Defendants have not waived the right to assert any applicable defenses by removing this action from state court. Rule 12 of the Federal Rules of Civil Procedure provides that every defense to a claim for relief in any pleading shall be asserted in the responsive pleading or by motion. *See* Fed. R. Civ. P. 12(b). Defendants did not

file a responsive pleading or a motion asserting defenses in the state court action, but instead will respond or plead in a timely fashion pursuant to the Federal Rules of Civil Procedure.

9. Defendant will file an Answer or other response within the time frame set forth in Rule 81(c)(2)(C) of the Federal Rules of Civil Procedure.

WHEREFORE, by this Notice of Removal, Defendant hereby removes this Action from the Court of Common Pleas for the Fifth Judicial Circuit of South Carolina to the United States District Court for the District of South Carolina, Columbia Division, and requests that this Action proceed as properly removed to this Court.

TURNER PADGET GRAHAM & LANEY, PA

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December 15, 2022